THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.14259 OF 2005

Dated: November, 2005.

Between:

A. Mallikharjun … Petitioner

And

1. The Commissioner, Endowments Department,
   A.P., Hyderabad.
2. Srikalahastheeswaraswamivari Devasthanam,
   Rep. by its Executive Officer, Srikalahasti,
   Chittoor District. … Respondents

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ORDER :

The writ petitioner was granted a lease by the 2nd respondent Devasthanam for supply of Silver Nagapadigalu for the period from 1-4-2004 to 31-3-2005. As per the terms agreed upon, the items to be supplied shall weigh 10 gms. each at the rate of Rs.116/- per piece. It appears that after the expiry of the period of lease initially granted, the petitioner requested for grant of lease for one more year. Having considered the same, the 2nd respondent by proceedings dated 11-5-2005 extended the lease period for one more year from 1-4-2005 to 31-3-2006 on an enhancement of 10% on the existing rate of Rs.116/- towards supply of Silver Nagapadigalu weighing 10 gms each. It is to be noted that the said proceedings were issued on the basis of the approval accorded by the 1st respondent vide proceedings dated 8-4-2005. While so, by proceedings dated 21-6-2005 issued by the 2nd respondent Devasthanam, the petitioner was informed that the orders of the 1st respondent dated 8-4-2005 whereunder the permission was granted to extend the lease from 1-4-2005 to 31-3-2006 was kept in abeyance. The said order is under challenge in this writ petition contending that the impugned order which was passed without any prior notice to the petitioner and without disclosing the reasons for keeping the orders of extension in abeyance is arbitrary and illegal apart from being violative of principles of natural justice.

In the counter-affidavit filed on behalf of the 2nd respondent temple, it is stated that the extension granted in favour of the petitioner by the then Commissioner was not in the interest of the temple and the same was granted in violation of the Rules framed under the provisions of Act 30 of 1987 and therefore the impugned proceedings have rightly been issued keeping in abeyance the earlier order of extension. It is explained that the leases, licences shall be granted by public auction/tenders and therefore according permission in favour of an individual for extension of lease is not in accordance with law and therefore the same was sought to be rectified. The 2nd respondent cannot procure the material from the petitioner.

I have heard the learned Counsel for both the parties and perused the material on record.

The learned Counsel for the petitioner submitted that the impugned action of

the respondents is unwarranted since there is absolutely no allegation against the petitioner and even the extension granted cannot be said to be in violation of any statutory provisions since in appropriate cases the Commissioner is competent to grant lease even otherwise than by way of public auction.

On the other hand, the learned Counsel for the 2nd respondent temple submits that the then Commissioner committed several irregularities and having taken note of the same the Government vide G.O.Rt.No.1123, dated 6-6-2005 directed that the order of extension issued by the then Commissioner dated 8-5-2005 shall be kept in abeyance and consequently the impugned proceedings have been passed. The learned Counsel submits that the extension granted with the approval accorded by the then Commissioner with the enhancement of 10% on the existing rate for the items to be supplied is detrimental to the interest of Devasthanam and the same is also not permissible under the statutory rules.

Under Rule 3 of The A.P. Charitable and Hindu Religious Institutions and Endowments Immoveable Properties and other Rights (other than agricultural lands) Leases and Licences Rules, 2003 (for short, 'the Rules') made under G.O.Ms.No.866, dated 8-8-2003 all leases or licences shall be made by way of public auction. It is true that under the proviso to Rule 3 (1), the Commissioner is competent to permit the lease of any right otherwise than by way of public auction. But, such power can be exercised only where the Commissioner was satisfied, for the reasons to be recorded in writing that the interest of the institution or endowment will not suffer thereby. The said Rule runs as under :

> *"3. (1) All leases or licences shall be made by way of public auction:*
>
> *Provided that the Commissioner may, on a request made in writing by the Executive Authority permit the lease of any property or right otherwise than by way if public auction, if he is satisfied, for reasons to be recorded in writing that the interest of the institution or endowment will not suffer thereby. He may grant permission to such executive authority to grant a lease otherwise than by way of public auction."*

In the case on hand, it is relevant to note that the then Commissioner while

granting approval for extension of lease period in favour of the petitioner as sought by the Executive Officer did not record his satisfaction that such extension is in the interest of the institution. On the other hand, the specific case of the respondents is that since the extension was granted on enhancement of 10% on the existing rate of Rs.116/- per each piece, it would be detrimental to the interest of Devasthanam. Having perused the proceedings dated 8-4-2005 under which the extension was granted without assigning any reasons as required under the proviso to Rule 3(1), prima facie it appears that the learned Counsel for the respondent is correct in contending that the extension granted by the then Commissioner under the proceedings dated 8-4-2005 was not in accordance with the statutory rules.

That apart, it is a matter of record that there were several complaints against the then Commissioner about the irregular appointments made by him in several Charitable and Hindu Religious Institutions and Endowments in the State in violation of the statutory rules which resulted in widespread public criticism. In the light of the same, the Government in exercise of powers conferred under section 93 (1) of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 has taken up *suo motu* revision of all the decisions and orders passed by the then Commissioner and having called for the records, issued G.O.Rt.No.123, Revenue (Endowments-I) Department, dated 6-6-2005 under Section 93 (2) of the Act, thereby keeping in abeyance all the proceedings as detailed in the Annexure to the said order issued by the then Commissioner until further orders. The order dated 8-5-2005 under which the extension of lease in favour of the writ petitioner was approved by the then Commissioner was also included in the list of orders annexed to G.O.Rt.No.1123, dated 6-6-2005. It is not in dispute that the said order passed under G.O.Rt.No.1123, dated 6-6-2005 was communicated to the 2nd respondent Devasthanam by the 1st respondent by proceedings dated 15-6-2005 and in pursuance thereof the 2nd respondent issued the impugned proceedings dated 21-6-2005.

Thus, it is clear that the *suo motu* revisional proceedings initiated by the Government under Section 93 of the Act are still pending and the impugned proceedings are nothing but consequential orders in terms of the orders of abeyance

passed by the Government under G.O.Rt.No.1123, dated 6-6-2005 pending the Revision. In the circumstances, in case the petitioner is aggrieved, he ought to have initiated appropriate proceedings in the Revision pending before the Government under Section 93 of the Act. As a matter of fact, the petitioner does not challenge the order passed by the Government under G.O.Rt.No.1123, dated 6-6-2005 much less the revisional proceedings initiated by the Government *suo motu*.

For the aforesaid reasons, it is not open to the petitioner to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India and therefore the relief as prayed for cannot be granted.

Accordingly, the writ Petition is dismissed. No costs.

Needless to mention that the interim order dated 26-9-2005 shall stand vacated.

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3rd November, 2005.

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